

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES, et al.,)	
)	
Plaintiffs,)	
v.)	No. 1:23-cv-00108-LMB-JFA
)	
GOOGLE LLC,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF COURT’S IN CAMERA REVIEW PURSUANT TO
THE SEPTEMBER 15, 2023 COURT ORDER**

The United States files this memorandum in compliance with the Court’s September 15, 2023 order related to the *in camera* inspection of certain government documents sought by Google in their Motion to Compel (Dkt. 406). The documents being submitted for review, which include both the “Wavemaker” work product information requested by Google and the privileged attorney-client communications surrounding creation of that work product for context, will be hand delivered to the Court contemporaneously to the filing of this memorandum. As the court will see from the documents, the information provided by Wavemaker was not raw data, but estimates provided for Navy at the specific request of counsel in response to a template prepared by counsel, and in order to provide legal advice regarding the damages claims in this case shortly after the filing of the Complaint in February 2023. On March 27, 2023 when discovery commenced, the United States issued a third party subpoena to Wavemaker for data related to Navy’s purchases, and all documents provided in response to that subpoena have been produced to Google. The United States does not intend to rely on these estimates to support its damages claims.

The United States also notes that the documents submitted for *in camera* review, in addition to being attorney-client communications and work product, were not produced or included on a privilege log in this litigation because they are not within the agreed upon scope of document discovery from the FAAs, reached after months of negotiations and compromises with Google, which covers only the period up until the filing of the complaint on January 24, 2023. Exhibit 2 to the United States' Opposition to Compel discusses the agreed upon period for FAA document productions (“[W]e intend to search custodial emails for the January 1, 2018-January 24, 2023 period.”). Accordingly, the United States maintains its position that the information Google seeks is protected work product and the Court should deny the motion to compel this information.

Dated: September 15, 2023

Respectfully submitted,

JESSICA D. ABER
United States Attorney

s/ Gerard Mene
Gerard Mene
Assistant U.S. Attorney
2100 Jamieson Avenue
Alexandria, VA 22314
Telephone: (703) 299-3777
Facsimile: (703) 299-3983
Email: Gerard.Mene@usdoj.gov

/s/ Julia Tarver Wood
JULIA TARVER WOOD
/s/ Katherine Clemons
KATHERINE CLEMONS
/s/ Michael J. Freeman
MICHAEL J. FREEMAN

United States Department of Justice
Antitrust Division
450 Fifth Street NW, Suite 7100

Washington, DC 20530
Telephone: (202) 307-0077
Fax: (202) 616-8544
Email: Michael.Freeman@usdoj.gov

Attorneys for the United States